

Appl. No. 10/553,363
Amdt. dated December 23, 2008
Reply to Office Action of October 1, 2008

REMARKS/ARGUMENT

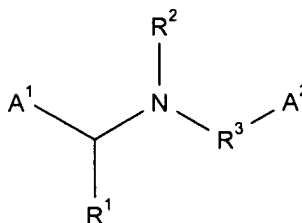
This amendment responds to the Office Action of October 1, 2008.

Claims 1 and 13-17 are pending in the application with claims 2-12 and 18-20 having been previously canceled. Support for the amendments to claims 1 and 13 appears in Examples 1 and 2 and in paragraph [0043] of Published U.S. Application No. 2006/0293369.

Claims 1 and 15-17 have been allowed.

Claims 13 and 14 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moloney et al. (U.S. Patent No. 6,503,933) and THE AGROCHEMICALS HANDBOOK (A0090/Aug 91).

Moloney et al. disclose compounds of formula (I) and salts thereof as phytopathogenic fungicides wherein A¹ is substituted 2-pyridyl; A² is optionally substituted phenyl; R³ is -(C=O)-, -SO₂- or -(C=S)-; R¹ is hydrogen, optionally substituted alkyl or acyl; and R² is hydrogen or optionally substituted alkyl:



It is understood that the Examiner has cited THE AGROCHEMICALS HANDBOOK to show that the compound chlorothalonil is a known fungicide. The inventors have acknowledged this citation by the Examiner in published paragraph [0015] of the present application.

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It is understood to be the Examiner's position that, because Compound (I) is a known fungicide and chlorothalonil is a known fungicide, it would be obvious to use them in combination.

The Applicants acknowledged that compounds of the pyridylmethylbenzamide type with fungicidal action – which make it possible to prevent the growth and the development of phytopathogenic fungi which attack or are capable of attacking crops – are known and that chlorothalonil is also a known fungicide. However, it is the Applicants' position that they discovered a combination that clearly exhibits synergism and is neither disclosed nor suggested by the cited art. They demonstrated the synergism for this combination in Examples 1 and 2 (*see*, in particular, Tables 3 and 4), using means for determining synergism that is accepted in the art, i.e., the Colby formula, which was published in the journal 15 WEEDS 20-22 (1967). The Examiner's attention is directed to U.S. Patent No. 6,753,339 in which the Colby method of determining synergism was also employed to the satisfaction of the Patent Office. Based on the teachings of the two cited references, a skilled artisan would have indeed expected a fungicide activity of mixtures of 2, 6-dichloro-N-{[3-chloro-5- (trifluoromethyl)-2- pyridinyl] methyl} benzamide and chlorothalonil but would not have expected any synergy when associating these compounds, as evidenced by the examples of the present application. Unexpected results have been shown for the claimed combination, and it logically follows from this showing that the combination cannot be obvious.

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The Applicants discovered a novel and unobvious combination of fungicides that exhibits a synergistic effect that allows a reduction of the chemical substances spread into the environment and a reduction of the cost of the fungal treatment. Thus, the combination of the present invention enables a reduction in the doses of chemical products spread in the environment in order to control fungal attacks of crops, especially potatoes, vegetables, and lawns. It enables this reduction in particular by reducing the doses of the products for application, and it increases the number of available antifungal products, allowing farmers to find the fungicidal agent best suited to their particular use. These advantages are neither taught nor disclosed by the cited art.

Further, the present claims are not simply directed to the combination of pyridylmethylbenzamide compounds and chlorothalonil but, rather, to a combinations of one of these fungicides – 2, 6-dichloro-N-{{3-chloro-5- (trifluoromethyl)-2- pyridinyl} methyl} benzamide, also known as fluopicolide – in relatively narrow, and specifically defined, ratios. There is no mention of the claimed ratios in the art cited by the Examiner or in the publications identified by the Applicants in paragraphs [0002] and [0003] of the present application.

On page 3 of the Office Action, the Examiner stated:

With respect to the ratio and amounts, it would have been obvious to one having ordinary skill in the art to optimize the amounts / ratios of ingredients. One would have been motivated to do this in order to make the most effective invention for controlling fungi in crops. Claim 1 recites fluopicolide/chlorothanil in a weight

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ratio of from 0.005 to 1 which appears to equate to a weight ratio of 1:200. If this is the correct interpretation, the specification provides no data supporting such a ratio. Claims 13 and 14 recite ratio ranges 0.1001:0.2 and 0.12:0.2 respectively. However, no data are provided to support said ratio ranges. Claims 12, 13 and 14 appear to recite ratios of 1:6.7, 1:2 and 1:7, respectively, for the fluopicolide/chlorothanil combination

The Examiner should note that claim 12 was canceled in the response to the previous Office Action. Further, in that response, claim 1 was amended to read, "in a fluopicolide/chlorothalonil weight ratio of from 1:20 to 1:1." Thus, claim 1 does not recite a weight ratio of from 0.005 to 1, as stated by the Examiner.

It appears that the Examiner may have misunderstood the Applicants' numerical notation. The language of claim 1, 1:20 to 1:1, can be considered to be the same as 1/20 to 1/1, or 0.05 to 1.0. This range is clearly supported in Examples 1 and 2 of the current application.

Claim 13, which reads "from 0.1001 to 0.2" clearly falls inside the range of 0.05 to 1.0, the range of claim 1, upon which claim 13 is directly dependent.

Similarly, claim 14, which reads "from 0.12 to 0.2" also clearly falls inside the range of 0.05 to 1.0, the range of claim 1, upon which claim 13 is indirectly dependent.

It is therefore requested that the rejection of claims 13 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Moloney et al. and THE AGROCHEMICALS HANDBOOK be withdrawn.

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2. Rejection of Claims 13 and 14 under 35 U.S.C. § 112, Second Paragraph

Claims 13 and 14 are rejected under 35 U.S.C. § 112, second paragraph, because, according to the Examiner, there is insufficient antecedent basis for the limitation of "weight ratio is from 0.1001 to 0.2" in claim 13 and "weight ratio is from 0.12 to 0.2" in claim 14. This rejection is respectfully traversed.

As discussed above, these ratios are within the range of claim 1, which is supported in Examples 1 and 2. Further, these ratios are supported in the specification in paragraph [0043] of U.S. 2006/0293369.

Accordingly, it is requested that the rejection of claims 13 and 14 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In view of the foregoing, it is submitted that this application is now in condition for allowance, and an early Office Action to that end is earnestly solicited.

Respectfully submitted,

 *Paul J. Ostrolenk*
Reg. No. 30,754

for

James L. Lewis
Registration No. 24,732
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone (212) 382-0700